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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
9 LITIGATION

No. M 07-1827 SI
MDL. No. 1827

10 Case Nos.: C 10-117 SI; C 10-5625 SI; C 11-
11 58 SI; C 11-2225 SI; C 11-3763 SI; C 11-3856
12 SI; C 11-4119 SI

13 This Order Relates to:

14 ALL CASES
15

**ORDER OVERRULING OBJECTION TO
SPECIAL MASTER'S ORDER
COMPELLING COMPLIANCE WITH
SUBPOENAS TO APPLECON LLC AND
JOHN METZLER**

16 The Indirect-Purchaser Plaintiffs and certain State Attorneys General's Offices (collectively,
17 "Plaintiffs") have objected to the Special Master's Order compelling compliance with subpoenas served
18 by defendant LG Display on applEcon, LLC, and John Metzler. *See* Special Master's Order, Master
19 Docket No. 5538. Having considered the arguments presented in the moving papers, the Court hereby
20 DENIES Plaintiffs' objection.

21 LG Display sought and obtained the Special Master's order compelling compliance with LG's
22 subpoenas requiring production of documents and the deposition of John Metzler. Metzler, an applEcon
23 employee, had provided a declaration used by the IPPs as factual support in its opposition to defendants'
24 motion to decertify the class. *See* IPPs' Opposition to Defendants' Motion to Decertify, Master Docket
25 No. 3862. Finding that the subpoenas were timely, and that the Direct Action Plaintiffs ("DAPs") and
26 the States are "highly likely" to rely on "Mr. Metzler's declaration or work," the Special Master granted
27 LG Display's motion to enforce the subpoenas. *See* Order at 5 (concluding that "discovery of relevant,
28 non-privileged documents and a deposition of Metzler is entirely within reason"). Plaintiffs object to

1 the Special Master's Order.

2 In reviewing the Special Master's Order, this Court employs two different standards of review.
3 The Special Master's conclusion regarding the timeliness of the subpoenas as to the Track 1- and Track
4 2-DAP cases is a procedural matter that the Court reviews for abuse of discretion; the Court reviews for
5 clear error the Special Master's conclusion that the DAPs and States intend to make use of Mr. Metzler's
6 work at trial. *See* Order Appointing Martin Quinn as Special Master, Master Docket No. 1679 (April
7 12, 2010) at ¶ 18.

8 The Court agrees with the reasoning set forth in the Special Master's Order and therefore adopts
9 the Order in its entirety. Plaintiffs' argument that the subpoenas were not timely because of previous
10 orders setting the discovery schedule is not persuasive. The Special Master made clear that, although
11 discovery closed on December 11, 2011, in the Track 1-DAP and State-AG cases, it is fair to extend the
12 discovery deadline with respect to the Metzler deposition because the interrogatory responses which
13 reference his work were filed after the close of discovery. *See* Order at 4 ("In fairness, LG Display
14 should be permitted to conduct discovery now with respect to this aspect of those responses
15 notwithstanding the close of discovery.") (emphasis original). Nor does the Court find that the Special
16 Master erred in concluding that Mr. Metzler is a non-expert and that the DAPs and States intend to use
17 his work "indirectly to prove an essential element of their claim." *See id.* The DAPs and States had an
18 opportunity at the April 6, 2012 hearing before the Special Master to disclaim any intent to rely on Mr.
19 Metzler's work or methodology, but did not.

20 Accordingly, the Court DENIES Plaintiffs' objection to the Special Master's Order. Master
21 Docket No. 5594.

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23 **IT IS SO ORDERED.**

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25 Dated: May 21, 2012

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27 SUSAN ILLSTON
28 United States District Judge